IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.3083 OF 2006.

Raymond Limited(Textile Division)..Petitioner.
Jekegram, Thane-400 606.

Vs.

Arun Laxman Lasane
C/o Woollen Mill Kamgar
Union, Shamrao Parulekar
Bhawan, Utthalsar,
District Thane. ..Respondent.

Mr P.K. Kale i/b. Mrs.Meena H. Doshi, Advocates for the Petitioner.

Mr S. P. Solkar, Advocate for the Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:21st NOVEMBER, 2006.

ORAL JUDGMENT.

1. Heard.

2. Rule. By consent, the Rule is made returnable forthwith. The petitioner challenges the impugned judgment and order dated 13th February, 2002 as well as order dated 18th of February, 2002 passed by the Labour Court, Thane in Complaint (ULP) No. 156/1991 as well as the order passed by the Revisional Authority namely Industrial Court

on 10th August, 2005 on various grounds. It is not necessary to refer to all those grounds and suffice to refer to only one ground namely the ground that in view of the finding arrived at by the Labour Court in the Part One Award dated 13.2.2002 that the enquiry was fair, legal and proper and findings of the Enquiry Officer are legal and proper regarding the charge of misconduct of remaining absent without leave or permission or absent without leave for more than 10 consecutive days, there was no justification for the Labour Court to hold that the charges of misconduct were not established. It is relating to this later part of the finding which is sought to be challenged on various grounds including the ground that though in similar enquiry which was conducted against two other employees and orders therein having passed on similar evidence, the Labour Court, Thane had held the charges have been proved against those employees, whereas only in relation to the present respondent a different finding has been arrived at without disclosing any reason to arrive at such a different finding.

3. Upon hearing of the learned Advocates for the parties and perusal of the impugned orders, it is apparent that though in two other cases which were also subject matter of W.P. Nos. 3091 and 3040 of 2006, wherein the findings arrived at about the proof of misconduct in relation to the employees were not only pertaining to the absentism but even regarding all other charges, some charges which are levelled against the respondent herein have been held to be proved on the same and similar evidence,however, in relation to the respondent herein, a totally different finding has been arrived at without disclosing any reason for such a different approach in relation to the respondent herein in comparison to those two employees. Once it is apparent that the quantity and quality of the evidence in relation to the respondent herein is in no way different from the evidence which was found to be sufficient to establish the misconduct on the part of those two employees, one fails to understand logic behind that different approach in relation to the respondent herein on the basis of same quantity and quality of the evidence. In

fact, there is no difference in the nature of the evidence which has been led by the petitioner in relation to the charges levelled against the respondent herein in comparison to the evidence which was led against the other two employees in respect of which misconduct has been held to have been proved. On this ground itself the impugned order dated 13th February, 2002 in relation to the finding that the Enquiry Officer's findings regarding misconduct other than the absentism are perverse cannot be sustained and matter is to be remanded to the Labour Court to deal with the said issue afresh. While granting liberty to the parties to lead further evidence,if any, in relation to the said issue, it is however, made clear that this Court has not expressed any opinion about the legality of those findings of the Enquiry Officer and the said issue is kept open to be decided by the Labour Court in accordance with the provisions of law after hearing the parties.

4. In the result,therefore, on the above limited ground,the impugned Award dated 13.2.2002 is set aside. Secondly, Award dated

18th February, 2002 as well as the order of the Revisional Court cannot be sustained as the basis for the later Award and Order of Industrial Court is the order dated 13.2.2002 passed by Labour Court. Hence all those orders are set aside and the matter is remanded as stated above. Since the matter relates to the year 1991, the Labour Court shall hear the matter, as expeditiously as possible, and shall dispose of the same on or before 31st August, 2007. Rule is made absolute accordingly in the above terms with no order as to costs.

[R.M.S.KHANDEPARKAR,J]